

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF TEXAS

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4 THE HONORABLE GEORGE C. HANKS, JR., JUDGE PRESIDING

5 UNITED STATES OF AMERICA, No. 4:21-cr-00009-1

6 Plaintiff,

7 vs.

8 ROBERT T. BROCKMAN,

9 Defendant.

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10 **STATUS CONFERENCE**

11 **PROCEEDINGS HELD BY VIDEO CONFERENCE**

12 **OFFICIAL REPORTER'S TRANSCRIPT OF PROCEEDINGS**

13 Houston, Texas

14 **November 4, 2021**

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15 **APPEARANCES:**

16 For the Plaintiff: Christopher Magnani, Esq.  
17 Lee F. Langston, Esq.

18 For the Defendant: Jason Varnado, Esq.  
19 Kathryn Keneally, Esq.

20 Reported by: Nichole Forrest, RDR, CRR, CRC  
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22 United States District Court  
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25 Proceedings recorded by mechanical stenography. Transcript  
produced by Reporter on computer.

## PROCEEDINGS

09:36:26

09:36:28

(The following proceedings held in open court.)

(The following proceedings also held by videoconference.)

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THE COURT: Good afternoon, everyone. The next case on the Court's docket is Cause No. 21-cr-9-1, the United States of America versus Mr. Brockman.

Can counsel on the line that will be speaking just introduce themselves for the Court and state the parties they represent starting with the government?

MR. MAGNANI: Good afternoon, Your Honor. This is Christopher Magnani for the United States, and I'm joined by Lee Langston.

THE COURT: Okay. Welcome.

MR. MAGNANI: And Boris Borge.

THE COURT: Okay. Welcome.

MR. VARNADO: And good afternoon, Your Honor. This is Jason Varnado on behalf of Mr. Brockman, and I'm joined by my colleagues Kathy Keneally and James Loonam. And our colleague Julia Camp is with Mr. Brockman to try to get his video on if she can turn his camera on now.

THE COURT: Great. Yes. I can see

04:03:42 1 Mr. Brockman. Welcome, Mr. Brockman.

04:03:46 2 Well, everyone, thank you for being  
04:03:48 3 available on short notice. I wanted to ask you a question  
04:03:51 4 about the hearing on Monday. I wanted to find out whether  
04:03:55 5 the parties had any thoughts on whether or not the hearing  
04:04:01 6 should or should not be sealed. I didn't think anybody  
04:04:04 7 wanted the hearing sealed, but then the government filed  
04:04:08 8 the expert reports that were under seal. So I wasn't sure  
04:04:13 9 whether or not you wanted the hearing -- the competency  
04:04:18 10 proceedings under seal.

04:04:20 11 And there is a number of different ways we  
04:04:24 12 can accomplish that. We can have the hearing, and then --  
04:04:29 13 and then -- and seal it, and then after the hearing redact  
04:04:34 14 any portions that Mr. Brockman might not want to be public  
04:04:39 15 with respect to his medical records or we can seal the  
04:04:43 16 entire hearing.

04:04:44 17 I wasn't sure where the parties stood on  
04:04:47 18 that. So before we got started on Monday, I wanted to  
04:04:50 19 speak to the parties and find out what you would like me  
04:04:53 20 to do.

04:04:57 21 MR. MAGNANI: We do not think that the  
04:04:59 22 hearing should be sealed, Your Honor.

04:05:07 23 THE COURT: Okay. Great.

04:05:07 24 MR. VARNADO: And, Your Honor, on behalf  
04:05:07 25 of Mr. Brockman, you know, we've not made the request that

04:05:08 1 it be sealed, and we actually don't think there is a legal  
04:05:11 2 ground to do so or we might have made that motion. So I  
04:05:15 3 think that's where we stand.

04:05:16 4 THE COURT: Great. We'll have -- the  
04:05:17 5 hearing will not be sealed then. I know that some folks  
04:05:21 6 want to request to attend by Zoom, but I'm not going to  
04:05:26 7 open up a Zoom link. If they're going to attend -- the  
04:05:30 8 hearing will be open, but it will be open in public. So  
04:05:34 9 anybody that wants to come to the courtroom will be  
04:05:36 10 available to come on down.

04:05:38 11 MR. VARNADO: And, Your Honor, I would say  
04:05:40 12 that the defense would object to a Zoom link. So glad  
04:05:42 13 that that's where you landed, and that it's an open  
04:05:44 14 hearing, but not something people can just log in to as  
04:05:47 15 the status conference right now.

04:05:47 16 THE COURT: Right.

04:05:50 17 MR. VARNADO: And, Judge, you said  
04:05:50 18 "Monday." I just want to make sure we're clear, it's a  
04:05:52 19 week from Monday that the conference starts. Just so --  
04:05:55 20 to make sure we're on the same page.

04:05:58 21 THE COURT: Right. A week from Monday.  
04:06:00 22 Sorry. Busy day.

04:06:02 23 MR. VARNADO: Yeah.

04:06:02 24 THE COURT: Okay. Well, thank you all for  
04:06:03 25 your time this afternoon. I won't keep you. I know it's

04:06:07 1 late in the afternoon, but I just wanted to get that issue  
04:06:09 2 cleared up before we got started a week from Monday.

04:06:13 3 MR. VARNADO: Judge, we did have one more  
04:06:14 4 issue, if you don't mind --

04:06:16 5 THE COURT: Sure.

04:06:17 6 MR. VARNADO: -- while we have the Court's  
04:06:18 7 time and attention. You'll recall from Monday that my  
04:06:21 8 colleague, Ms. Keneally, had noted that two of the  
04:06:24 9 government's experts had changed their opinions from May  
04:06:29 10 of this year, stating that Mr. Brockman was competent to  
04:06:34 11 their more recent reports in October stating they couldn't  
04:06:37 12 tell and make a determination as to whether he was  
04:06:39 13 competent.

04:06:40 14 And at the hearing on Monday, you know, we  
04:06:42 15 raised this, said, look, we don't want to get sandbagged  
04:06:46 16 if there's some change at the very end, and you asked  
04:06:48 17 Mr. Langston, you know, based upon what you have right  
04:06:51 18 now, do you plan on supplementing your expert reports --  
04:06:53 19 and this was on Monday -- and he said, "no, Your Honor,"  
04:06:56 20 because the parties had already exchanged expert reports.

04:06:58 21 So last night about an hour after we got  
04:07:00 22 the notification from Mr. Thomas that we were going to  
04:07:04 23 have this status conference, we got an e-mail from  
04:07:06 24 Mr. Langston saying, well, actually one of our experts,  
04:07:10 25 Dr. Dietz, is going to change his opinion again, and now

04:07:14 1 say that Mr. Brockman is not competent.

04:07:18 2 And so, you know, we just got that report  
04:07:20 3 this afternoon. We're digesting it. We'll let you know  
04:07:23 4 if we have any issues there. But in response to  
04:07:26 5 Mr. Langston's e-mail, we followed up and said, well,  
04:07:31 6 look, there is still Dr. Darby, he's the other doctor  
04:07:34 7 who's hired by the government that says I can't determine  
04:07:35 8 if Mr. Brockman is competent. And we said, all right.  
04:07:38 9 You've got all the information. We're not exchanging  
04:07:41 10 medical documents.

04:07:43 11 You know, is he going to -- is he still  
04:07:45 12 remaining where he can't make a determination, and the  
04:07:48 13 response was, as of now, he has no intent to file a  
04:07:50 14 supplemental report.

04:07:52 15 And I just want to be -- you know, get the  
04:07:53 16 record clear that -- and there is nothing else for  
04:07:57 17 Dr. Darby to consider. And that -- we should just get a  
04:08:00 18 commitment from the government that whatever Dr. Darby's  
04:08:03 19 supplemental report is, that is the extent of his  
04:08:05 20 opinions.

04:08:07 21 THE COURT: Mr. Langston, response?

04:08:08 22 MR. LANGSTON: Sure, Your Honor. So after  
04:08:12 23 the hearing on Monday, we did have discussions with our  
04:08:15 24 doctors to ensure that the defense got what they needed as  
04:08:18 25 soon as they could get it.

04:08:19 1 You know, we understood then, you know, we  
04:08:22 2 had a call with them Tuesday and learned that they were  
04:08:25 3 still going through all of the material. You know, there  
04:08:28 4 were over, I think, eight gigabytes of information  
04:08:30 5 exchanged between the two parties.

04:08:32 6 So they told us that on Tuesday. On  
04:08:35 7 Wednesday, Dr. Dietz told us that after having reviewed  
04:08:40 8 the material, including material he did not have access to  
04:08:43 9 until Monday, he -- you know, he now was able to come to  
04:08:50 10 an opinion on the defendant's competency.

04:08:53 11 You know, we said, look, you know, you  
04:08:55 12 need to file a supplemental report immediately. You know,  
04:08:58 13 he did prepare that. It's three pages. So, you know, we  
04:09:02 14 do understand the defense is going through it. You know,  
04:09:05 15 we have asked all three experts if they have any further  
04:09:07 16 updates. I can't imagine they have gone through all eight  
04:09:12 17 gigabytes, but they've all told us that at this point  
04:09:13 18 there are no further updates.

04:09:15 19 THE COURT: Okay. Well, I guess  
04:09:18 20 Mr. Varnado has is that how can he prepare for a  
04:09:21 21 competency hearing if he doesn't know what the expert  
04:09:24 22 opinions are definitely going to be? I mean, I guess --  
04:09:28 23 I'm putting kind of words in your mouth, Mr. Varnado, but  
04:09:31 24 that is kind of what I'm hearing.

04:09:32 25 I mean, how can they prepare -- I mean, I

04:09:39 1 guess I'm trying to figure out what the issue -- what --

04:09:41 2 (Parties speaking simultaneously.)

04:09:41 3 THE COURT: -- the additional documents.

04:09:44 4 Oh, I'm sorry.

04:09:44 5 MR. VARNADO: Judge, I apologize, Judge,

04:09:45 6 with the delay, I didn't mean to talk over you.

04:09:48 7 THE COURT: Oh, no. That's okay. I spoke

04:09:49 8 over you. I'm sorry.

04:09:50 9 MR. VARNADO: No. That's exactly what

04:09:51 10 we're trying to -- that -- you stated our point exactly.

04:09:53 11 And I'll just note that they've had, you know -- I don't

04:09:56 12 have the gigabytes that Mr. Langston is talking about --

04:09:58 13 they've had the reports, you know, since Friday. And we

04:10:01 14 got theirs a day late later than supposed to on Saturday.

04:10:05 15 So, look, we're going to be happy to

04:10:07 16 cross-examine Dr. Dietz on his vacillating positions at

04:10:11 17 the hearing. But we need to know what is -- you know,

04:10:15 18 that Dr. Darby -- what he's put in his supplemental report

04:10:19 19 is the end of it, and he's not going to get on the stand

04:10:20 20 and say something else.

04:10:23 21 MR. LANGSTON: And, Your Honor, we have no

04:10:24 22 information to suggest that there are going to be any

04:10:25 23 other updates. I can't tell the Court that they have

04:10:29 24 reviewed all of the information and we have told them, you

04:10:32 25 know, look, if you're -- as you go through the



04:10:35 1 information, you know, the government is looking for the  
04:10:38 2 correct outcome in this case.

04:10:42 3 And so if they, you know, discover  
04:10:43 4 something that changes their opinion, we don't want them  
04:10:45 5 to be bound just to the reports that they have filed,  
04:10:47 6 obviously.

04:10:48 7 You know, again, we have no reason to  
04:10:51 8 believe that there are going to be any further supplements  
04:10:53 9 coming. If there was one, obviously, you know, we would  
04:10:57 10 turn that over as soon as we had it, you know, as we did  
04:11:01 11 with Dr. Dietz. We notified the defense as soon as we  
04:11:04 12 learned that he was planning on filing a supplement.

04:11:06 13 And obviously, if the defense is  
04:11:07 14 prejudiced, you know, they can file a motion to strike or,  
04:11:11 15 you know, we can cross that bridge when we get there.

04:11:19 16 THE COURT: Okay. Well, I -- here's the  
04:11:20 17 deal. Yes. We can cross the road before we get there,  
04:11:23 18 but I would rather not get there.

04:11:24 19 I would rather the experts, you know, look  
04:11:26 20 at documents now and figure out whether or not they are or  
04:11:31 21 are not going to have a supplemental report and get sort  
04:11:33 22 of a deadline for them.

04:11:35 23 Because if they come up with, you know,  
04:11:37 24 let's say they review it over this weekend and come up  
04:11:41 25 with something on Monday, you know, and provide a

04:11:43 1 supplemental expert report, you know, I -- Mr. Varnado's  
04:11:48 2 position is, well, I want to have the opportunity to have  
04:11:50 3 the time to be prepared to cross-examine him on that, and  
04:11:54 4 they may not be able to have that time. They might need  
04:11:59 5 to do additional research. I don't know. Just depending  
04:12:00 6 on what the opinion is.

04:12:01 7                   So I guess what I would like is the  
04:12:05 8 experts to do everything they can to review those  
04:12:08 9 documents as quickly as possible to get -- if there is  
04:12:14 10 going to be a supplemental report, we need it now rather  
04:12:17 11 than, like, two or three days before the hearing.

04:12:23 12                   So, Mr. Langston, can you speak with  
04:12:24 13 your -- the experts and impress upon them that if they are  
04:12:26 14 looking at the documents and think there may be something  
04:12:31 15 else, to let us know as soon as possible.

04:12:32 16                   And then, Mr. Varnado, of course, I will  
04:12:35 17 give you the opportunity to object or, you know, raise  
04:12:38 18 whatever issues you wish with respect to the timing of the  
04:12:42 19 supplemental report.

04:12:46 20                   MR. VARNADO: Thank you, Judge. And I --  
04:12:46 21 just to be clear. I want to make sure I'm clear for the  
04:12:49 22 record. You know, Dr. Dietz, his second opinion was that  
04:12:52 23 he couldn't make a determination. His most recent opinion  
04:12:54 24 is that he has found Mr. Brockman competent. It's  
04:12:59 25 Dr. Darby now.

04:13:00 1 And I would like to request the Court give  
04:13:00 2 to them a deadline no later than Monday that if he's going  
04:13:03 3 to say anything other than it's his opinion that he can't  
04:13:07 4 determine whether Mr. Brockman is or is not competent --  
04:13:10 5 because that's his present opinion -- if it's going to  
04:13:12 6 change from anything from that, that we be -- that we get  
04:13:14 7 a supplemental report by Monday. That is a week before  
04:13:17 8 the hearing. I think that is a reasonable request.

04:13:21 9 THE COURT: Mr. Langston.

04:13:22 10 MR. LANGSTON: As I said, Your Honor, we  
04:13:24 11 have already had that conversation with our doctors.

04:13:27 12 And so, as I said, we have no belief that  
04:13:31 13 there will be any further reports in this case. If there  
04:13:34 14 are some, we can cross that -- if you would like us to  
04:13:37 15 give them a further deadline of Monday, we're happy to do  
04:13:37 16 that.

04:13:40 17 But, as I said, right now, we have no  
04:13:42 18 information that there will be another one.

04:13:44 19 THE COURT: Here is what I'm going to do.  
04:13:47 20 A week from the hearing I think is reasonable. Any  
04:13:50 21 supplements need to be filed a week from -- need to be  
04:13:53 22 filed by Monday absent good cause.

04:13:58 23 And so they need to be filed by Monday.

04:14:00 24 If, Mr. Langston, they do need to file  
04:14:03 25 them later, I'm going to require them to show good cause

04:14:07 1 why they could not get a supplemental expert report before  
04:14:09 2 then. I mean, because I don't know what they're looking  
04:14:11 3 at. I don't know if there is -- you know, they need  
04:14:13 4 additional information. I don't know.

04:14:15 5 But basically, I think it's reasonable to  
04:14:17 6 have a cutoff of a week before the hearing for any  
04:14:23 7 supplemental reports. And then absent good cause, I'm not  
04:14:27 8 going to allow any supplements.

04:14:29 9 So if there is good cause, if they can  
04:14:31 10 come back and explain to me -- excuse me, why they could  
04:14:34 11 not get a supplemental report by Monday, that will be  
04:14:38 12 great.

04:14:39 13 But Monday is the deadline. I think that  
04:14:43 14 is reasonable.

04:14:45 15 MR. LANGSTON: That's reasonable.

04:14:47 16 MR. VARNADO: Thank you, Judge.

04:14:51 17 One other -- there was just a logistic  
04:14:52 18 matter, if you don't mind. It'll just take a moment.

04:14:52 19 THE COURT: Sure.

04:14:54 20 MR. VARNADO: So the hearing is set to  
04:14:55 21 begin on November 15th. I think the parties both believe,  
04:14:58 22 based on our prior conversations, it's going to last a  
04:15:01 23 full, you know, four to five days. You're going to hear  
04:15:03 24 from lay witnesses, you're going to hear from expert  
04:15:05 25 witnesses from both sides.

04:15:06 1 And we think it would benefit the  
04:15:08 2 proceeding and the Court if we were, you know, each side  
04:15:11 3 were afforded a short time for an opening statement, maybe  
04:15:14 4 not more than 15 minutes, to kind of set the stage for  
04:15:17 5 what's to come in the week ahead.

04:15:19 6 I'll note that there won't be a need for  
04:15:22 7 closing arguments. So we're not trying to treat this as a  
04:15:24 8 full-blown trial. There was a briefing schedule following  
04:15:26 9 the hearing, and I think that is where the parties can  
04:15:28 10 make their arguments and points to the Court about what  
04:15:31 11 happened at the hearing.

04:15:32 12 But we do request the Court allow each  
04:15:36 13 side to have a brief opening of no more than 15 minutes as  
04:15:42 14 we get started at the hearing on Monday, if that's  
04:15:43 15 agreeable to the Court.

04:15:43 16 THE COURT: Mr. Langston, do you have any  
04:15:44 17 problem with that?

04:15:45 18 I think it would be helpful to me. I  
04:15:49 19 mean, I've only up to this point got bits and pieces. I  
04:15:51 20 don't have the big picture so to speak yet of all the  
04:15:55 21 evidence. I mean, I've got -- I've seen some expert  
04:15:58 22 reports from both sides, but I've not seen the big  
04:16:02 23 picture.

04:16:02 24 So I think argument will be helpful.

04:16:05 25 Mr. Langston, I think it would be helpful

04:16:07 1 for the government as well.

04:16:08 2 MR. LANGSTON: If you think that would be  
04:16:10 3 helpful to you, Judge, we're happy -- we agree with the  
04:16:12 4 defense that that would be a useful exercise.

04:16:14 5 THE COURT: Okay. Then each side will get  
04:16:17 6 15 minutes for opening. No closing, just opening. Just  
04:16:19 7 provide me a roadmap of where you're going. It's -- and  
04:16:22 8 the only reason why sometimes I hesitate about granting  
04:16:27 9 openings in this type of evidentiary hearing is the  
04:16:30 10 parties inevitable use it as a platform for argument.

04:16:35 11 This isn't argument. It's opening  
04:16:36 12 statement, just like it would be at a trial, which means  
04:16:39 13 that I need you to provide me a roadmap, not argue the  
04:16:43 14 case.

04:16:43 15 But this is to provide me with a roadmap  
04:16:46 16 of what the evidence is going to show, and what I need to  
04:16:50 17 be focused on when I'm listening to the evidence. If you  
04:16:52 18 start arguing your case, then we're going to cut things  
04:16:57 19 short because that -- I don't need argument. I need a  
04:17:00 20 roadmap.

04:17:03 21 So everybody is clear, we're doing opening  
04:17:05 22 statements, but it's an opening statement like in a trial  
04:17:08 23 in the sense that it's not argument. It is basically  
04:17:12 24 opening statement, which will give me a roadmap and kind  
04:17:15 25 of tell me the story as to how all this evidence pieces

04:17:19 1 together -- all the pieces of evidence fit together.

04:17:23 2 MR. VARNADO: That is very helpful, Judge.

04:17:25 3 And I think that, you know, given -- what  
04:17:27 4 you've seen and not seen so far having a, you know, sort  
04:17:31 5 of introduction to the matter at large from each side will  
04:17:34 6 be helpful, and then we'll obviously get underway and have  
04:17:36 7 a lengthy hearing.

04:17:37 8 THE COURT: Okay. Great.

04:17:40 9 Anything else we need to talk about?

04:17:43 10 MR. LANGSTON: Yes, Your Honor, just very  
04:17:43 11 briefly. The parties exchanged witness lists back in  
04:17:47 12 August. And I think, you know, that was a month after the  
04:17:50 13 original hearing, and, you know, I understand the tendency  
04:17:53 14 of both parties to include, you know, every name that  
04:17:55 15 could conceivably be relevant, but -- so the witness list  
04:17:59 16 we were looking at from the defense has 27 names on it  
04:18:02 17 right now.

04:18:03 18 And I think given the timeline, it is  
04:18:04 19 likely that there will not be 27 witnesses called or at  
04:18:09 20 least I, you know, I don't think we're going to keep to  
04:18:11 21 our five days if there are.

04:18:12 22 So if, you know, by sometime next week if  
04:18:14 23 we could get a pared down witness list, I think that would  
04:18:19 24 more efficiently help with the preparation.

04:18:20 25 THE COURT: Okay. Yes. So --

04:18:21 1 MR. VARNADO: I'll be happy to do that,  
04:18:23 2 Judge.

04:18:23 3 THE COURT: Okay. So -- and I want an  
04:18:25 4 additional requirement on the witness list. So I want you  
04:18:33 5 guys to pare down the witness list and provide me the  
04:18:35 6 witness list, but I also want you -- it's a little bit of  
04:18:38 7 homework, but you have a week to do it.

04:18:41 8 With respect to the witnesses, first of  
04:18:44 9 all, the night before you put on the witnesses you need to  
04:18:47 10 let the other side know which witnesses you're going to  
04:18:50 11 call and approximately how long they're going to be on the  
04:18:53 12 stand for any sort of direct examination.

04:18:56 13 And the reason I need to know that is  
04:18:58 14 because inevitably, if the other side isn't prepared,  
04:19:04 15 these hearings take much, much longer than anticipated or  
04:19:07 16 necessary. We're not going to do this by ambush.  
04:19:13 17 Basically, by 5:00 p.m. the night before, if the  
04:19:16 18 government is going to be putting on witnesses, you need  
04:19:17 19 to let Mr. Varnado know we anticipate calling X, Y, and Z  
04:19:20 20 witnesses, and we expect, at least from our direct, that  
04:19:25 21 they're going to be on for X amount of time. That way  
04:19:29 22 everybody has an idea of, you know, who to get ready for  
04:19:32 23 so we're not doing this on the fly.

04:19:34 24 And that applies to both sides. So when  
04:19:39 25 it's your turn, Mr. Varnado, you let the government know



04:19:43 1 the night before by 5:00 p.m. who the witnesses are going  
04:19:47 2 to be and approximately how long you anticipate them going  
04:19:49 3 on the stand -- being on the stand.

04:19:50 4 Now, I know things fluctuate. Sometimes  
04:19:53 5 witnesses take longer than expected. But you guys, you've  
04:19:57 6 been working this case for a long time. You should have a  
04:19:59 7 ballpark idea of how long it's going to take for direct.

04:20:03 8 Cross, of course, you know, it fluctuates.  
04:20:12 9 But you'll know for direct, and that will give you an idea  
04:20:14 10 when we're going along as to whether we're on track for  
04:20:16 11 getting done in four or five days or is this going to take  
04:20:18 12 a whole lot longer.

04:20:20 13 MR. VARNADO: Your Honor, I was just going  
04:20:21 14 to ask -- I apologize -- you know, given that Monday we'll  
04:20:22 15 get going, we'll get started, and, you know, if estimates  
04:20:27 16 are correct, go through at least a third of the  
04:20:28 17 government's case. We would ask that we get their  
04:20:30 18 witnesses for Monday and their proposed order by Friday  
04:20:33 19 before the hearing starts so we're not waiting until  
04:20:36 20 Sunday at 5:00 to figure this out, and we can get that on  
04:20:39 21 Friday just so that we can get started and get going in a  
04:20:42 22 smoother fashion.

04:20:44 23 MR. LANGSTON: We're happy to do that,  
04:20:45 24 Your Honor, with the exception of we have one witness that  
04:20:47 25 is flying in on Friday.

04:20:49 1 So there may be, you know -- if something  
04:20:52 2 happens to his flight, that may shuffle the order, but we  
04:20:55 3 can provide the witness -- we can provide the list as we  
04:20:57 4 know it on Friday.

04:20:59 5 THE COURT: Okay. I mean, typically, even  
04:21:01 6 over the weekend when I'm in trial, I don't require until  
04:21:07 7 5:00 on Sunday, the night before.

04:21:13 8 So, you know, try to get it to them on  
04:21:13 9 Friday, but if you can't, if you can explain to me why you  
04:21:16 10 can't, that's not a problem. I mean, I know it would --  
04:21:19 11 it makes it easier for everyone. But my rule is 5:00 p.m.  
04:21:24 12 the night before.

04:21:24 13 So, you know, if you like, Mr. Langston,  
04:21:27 14 you can try to get it to him by Friday, but if you can't  
04:21:29 15 get it to him by Friday, I'm not going to -- I'm not going  
04:21:32 16 to hold it against you. Because thing -- I mean, you've  
04:21:36 17 got a weekend.

04:21:38 18 And inevitably what happens -- and I know,  
04:21:41 19 Mr. Varnado, you like the extra days, but the problem is  
04:21:43 20 over the weekend, a lot happens when you're preparing  
04:21:45 21 witnesses; you know, strategy might change. People might  
04:21:51 22 be available. You might need more time with people, and  
04:21:51 23 you might change the order.

04:21:58 24 So I know Friday would be helpful to you,  
04:21:59 25 but Sunday night is the deadline. But if -- Mr. Langston,

04:22:01 1 if you can get it by Friday, by all means. Parties, try  
04:22:05 2 to do so, but I'm not going to hold you to it.

04:22:10 3 MR. VARNADO: Understood, Judge.

04:22:12 4 THE COURT: Okay.

04:22:13 5 Anything else we need to talk about?

04:22:17 6 MR. LANGSTON: That's everything from the  
04:22:18 7 government, Your Honor.

04:22:18 8 THE COURT: Great.

04:22:21 9 As far as exhibits that are going to be  
04:22:24 10 used for the hearing, I just want to let you guys know  
04:22:27 11 that you-all are going to be responsible for keeping track  
04:22:30 12 of any exhibits that are admitted.

04:22:32 13 And then at the end of the hearing, I'm  
04:22:34 14 going to have you-all sign, basically, an affidavit saying  
04:22:37 15 these are the documents that the Court -- that were  
04:22:40 16 admitted during the hearing, and these are the documents  
04:22:42 17 that the Court is to consider as part of the competency  
04:22:47 18 hearing.

04:22:48 19 And the reason I'm doing that is that I  
04:22:50 20 don't want a situation where there were documents that  
04:22:54 21 should have been sent to me that weren't sent to me or  
04:22:57 22 should have been redacted or weren't redacted, and I end  
04:22:59 23 up getting something that I'm not supposed to get or I get  
04:23:03 24 too much stuff from either side.

04:23:07 25 So you-all, during the course of the

04:23:08 1 hearing, keep track of what -- I'll have my own list, but  
04:23:10 2 you-all keep track of what was admitted and not admitted.  
04:23:14 3 And at the end of the hearing, I need you to put all that  
04:23:17 4 together in a box, sign the affidavit saying these are the  
04:23:19 5 documents that we understand were admitted, and you guys  
04:23:23 6 got to get together and agree to all that.

04:23:25 7 Then it comes to me, and then those are  
04:23:26 8 the documents I'll work from with respect to making my  
04:23:30 9 decision so there is no question on appeal, what I  
04:23:34 10 considered or what I didn't consider, and there is no  
04:23:37 11 question on appeal what -- you know, what was admitted and  
04:23:39 12 what wasn't admitted.

04:23:43 13 Can you guys do that?

04:23:45 14 THE ATTORNEYS IN UNISON: Yes, Your Honor.

04:23:46 15 THE COURT: Great.

04:23:49 16 MR. LANGSTON: Your Honor, would you like  
04:23:52 17 a working copy? We are planning on making exhibit  
04:23:54 18 binders. Do you want a working copy for during the  
04:23:56 19 hearing?

04:23:57 20 THE COURT: Yes. So the copies that  
04:23:58 21 you're putting together in that box, that is going to be  
04:24:00 22 the official copies for the record. You know, so I'll  
04:24:05 23 know exactly what I have.

04:24:06 24 But I need a binder -- just one binder. I  
04:24:09 25 don't need any more than one; just one binder of all the

04:24:12 1 exhibits that you are going to try to -- both sides are  
04:24:16 2 going to try to admit.

04:24:18 3 MR. LANGSTON: Okay.

04:24:19 4 THE COURT: And the last thing is: Are  
04:24:20 5 there any documents that you-all agree should be  
04:24:24 6 pre-admitted?

04:24:25 7 That might streamline things. That is,  
04:24:27 8 both sides agree these documents should be included into  
04:24:30 9 evidence. Because if they are those documents -- and I'm  
04:24:34 10 not pressuring you to agree or not agree -- but if there  
04:24:36 11 are those documents, it might make it easier at the  
04:24:40 12 beginning of the hearing to just go ahead and pre-admit  
04:24:42 13 those.

04:24:44 14 But if they're not, don't worry about it.  
04:24:46 15 But if -- if everybody agrees are -- they should be  
04:24:50 16 admitted for purposes of the hearing. We can go ahead and  
04:24:55 17 get that on the record.

04:24:55 18 That way we don't have to, you know, as I  
04:24:57 19 say, do it the old-fashioned way, you know, show it to  
04:25:01 20 opposing counsel, ask to approach the witness, show the  
04:25:03 21 witness, lay the foundation.

04:25:06 22 You know, just go ahead -- you can go  
04:25:07 23 ahead and use the documents. That might save a little  
04:25:11 24 time.

04:25:12 25 MR. VARNADO: There probably will be some

04:25:14 1 of those, Judge, and we'll be sure to coordinate with the  
04:25:16 2 government on which ones we can align on and get through  
04:25:18 3 that process quicker. That is a great idea.

04:25:21 4 THE COURT: Great. Okay. That's pretty  
04:25:23 5 much all that I can think of.

04:25:25 6 I was going through my checklist. The  
04:25:28 7 first thing, as I said, we dealt with which was the  
04:25:30 8 whether or not sealed, and then the order of witnesses and  
04:25:35 9 approximate times, and then the evidence.

04:25:36 10 Anything else that you guys can think of  
04:25:38 11 that we need to address before next Monday?

04:25:44 12 MR. LANGSTON: No, Your Honor.

04:25:45 13 MR. VARNADO: Not from the defense, Your  
04:25:47 14 Honor. Thank you.

04:25:47 15 THE COURT: Okay. Well, if anything comes  
04:25:48 16 up between now and next Monday, please let me know.

04:25:52 17 If there is any problems with expert  
04:25:54 18 reports, Mr. Varnado and Mr. Langston, let me know. I'm  
04:25:56 19 available. I'll get on the line like we're doing this  
04:26:01 20 afternoon, and we'll talk it through.

04:26:03 21 MR. VARNADO: Very good, Judge. Thank you  
04:26:05 22 so much for your time.

04:26:05 23 THE COURT: Thank you-all for having this  
04:26:10 24 hearing late in the afternoon. I really appreciate it.  
04:26:11 25 Take care you-all. Thanks. Goodbye.

(Proceedings concluded.)

C E R T I F I C A T E

I hereby certify that pursuant to Title 28, Section 753 United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings in the above matter.

Certified on November 4, 2021.

/s/ Nichole Forrest  
Nichole Forrest, RDR, CRR, CRC

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